

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

RE-MAILED

MAR 03 2005

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID STUTSMAN

Appeal No. 2005-0615
Application 09/290,777

MAILED

FEB 17 2005

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

ON BRIEF

Before FRANKFORT, NASE, and BAHR, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

REMAND TO THE EXAMINER

The above identified application is being remanded to the examiner under the authority of 37 CFR 41.50(a) and MPEP § 1211 for appropriate action with regard to the items listed below.

Appeal No. 2005-0615
Application No. 09/290,777

In a telephone conversation on February 14, 2005, it was determined that appellant's representatives had not received the Supplemental Examiner's Answer mailed on February 24, 2004 or the Board of Patent Appeals and Interferences Docketing Notice mailed January 21, 2005. It appears that this situation resulted from the PTO's failure to properly note and enter or record in the file wrapper and other PTO data bases a "Change of Correspondence Address" filed by appellant on December 15, 2003. A copy of the above-noted change of address appears in the Image File Wrapper.

Accordingly, since it is clear that appellant has had no opportunity to respond to the new and more detailed Supplemental Examiner's Answer, we remand for the examiner to take appropriate corrective action by having the "Change of Correspondence Address" properly entered and the Supplemental Examiner's Answer remailed. We also hereby vacate the BPAI Docketing Notice mailed January 21, 2005.

Upon remailing of the Supplemental Examiner's Answer, appellant should have an opportunity to respond by filing a further reply brief, and we encourage appellant to do so.

Appeal No. 2005-0615
Application No. 09/290,777

This remand to the examiner pursuant to 37 CFR §41.50(a)(1) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)) is not made for further consideration of a rejection.

This application, by virtue of its "special" status, requires immediate action, see MPEP § 708.01 (item D), Eighth Edition, Rev. 2, May 2004.

REMAND TO THE EXAMINER

Charles E. Frankfort

CHARLES E. FRANKFORT)
Administrative Patent Judge)

)

Jeffrey V. Nase

JEFFREY V. NASE)
Administrative Patent Judge)

BOARD OF PATENT
APPEALS AND
INTERFERENCES

)

Jennifer D. Bahr

JENNIFER D. BAHR)
Administrative Patent Judge)

Appeal No. 2005-0615
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